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Subject: Electronic Fund Transfers

The purpose of this e-mail is to submit comment on the Proposed Rule regarding Regulation E, Electronic Fund Transfers.

ECK & ARC transactions

My understanding of the proposed rule is that every ARC, a type of ECK transaction, will be considered a one-time EFT from the consumer's account and that the payee would be required to obtain a consumer's authorization prior to creating each and every ARC.

In its explanation, the statement was made, "Generally, a notice about authorizing an ECK transaction would have to be provided for each transaction." The explanation went on to encourage or permit (require?) the practice of obtaining authorization by placing a clear and conspicuous generic statement on or with a billing statement or invoice. Further, the notice would need to indicate that if processed as an EFT, funds may be debited from the a consumer's account quickly, and if applicable, that the consumer's check will not be returned by the consumer's financial institution.

My first comment is that since the sentence quoted above started with the word, "Generally," that additional guidance be given on when a notice about authorization would not have to be given for each transaction.

I also note that the proposed notice of authorization and notice on each and every invoice is unnecessary. Its impact and benefit to the consumer is negligible when compared to the ongoing cost that will be incurred by the sender of the invoice. (Keep in mind that this is the second "clear and conspicuous notice" that may be imposed on certain billings and invoices. Reference the "negative information" notice that resulted from the FACT Act.) In addition, this process of obtaining "authorization" is really not an act of authorization, but as the summary states more than once, it is a "notice" of authorization. By treating a "notice" as an "authorization," I believe the Board is overburdening the payees that will be subject to the proposed rule.

My second comment also refers to each "notice of authorization" and the need to state that if processed as an EFT, funds would be debited from the consumer's account more quickly and, if applicable, that the check will not be returned to them. I challenge the accuracy of the statements and the need for the statements in light of Check 21. Under Check 21, consumers are already being made aware that every check they write may be converted to an IRD or substitute check, and that the actual check they write may not be returned. If consumers know that this is true for every check they write, why is requiring this notice on each and every billing statement going to be of benefit to the consumer? Imposing this requirement on each and every billing statement or invoice

appears to be an attempt at addressing a problem that, even if it exists in some form today, should not be expected to be a problem in the near future.

I ask the Board to consider the following option:

The initial EFT disclosure is going to be modified to identify an ECK as another type of transfer. The "notice" or "authorization" for an ARC transaction should be included in the initial disclosure as a one-time notice to the consumer. If it is deemed necessary to inform consumers that that payees may convert information from their check into an EFT, these transactions may clear more quickly than the actual check, and if converted, the physical check will not be returned to them, let this be accomplished through the initial disclosure as well.

Proposed comment 3(b)(2)-2

At the end of the section-by-section analysis, the Board asked for comment on whether payees that obtain alternative authorization should be required to specify the circumstances under which a check that can be used to initiate an EFT will be processed as a check. The Board is concerned that consumers will not know if check has been converted to an EFT, and as a result, whether they are afforded any protection under Regulation E.

My comment again is focused on ARC transactions because I believe treating such transactions the same as ECKs transacted in person at a POS terminal is inappropriate. Payees cannot and should not be restricted to processing a check based on how they generally would prefer to handle such items or how they mention it on a billing notice just so the consumer knows whether a transaction was or wasn't an EFT. Operational issues can surface with little notice that may result in the need to treat some or all checks differently than initially disclosed. If anything, the consumer should be prompted to consider determining whether any check they wrote was processed as an EFT whenever they feel a check they wrote is incorrectly charged to their account, or if information from their check resulted in an unauthorized transfer.

I do not see where the initial or annual error resolution notice was changed in the proposed rule. Modifying these notices might be the most practical place to remind customers that the statements made also apply to checks that were converted to an ARC type of EFT.

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